

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATE FARM MUTUAL AUTOMOBILE	:	CIVIL ACTION
INSURANCE COMPANY and STATE FARM	:	
FIRE AND CASUALTY COMPANY,	:	NO. 03-969
	:	
Plaintiffs,	:	
	:	
	:	
v.	:	
	:	
METROPOLITAN FAMILY PRACTICE,	:	
METROPOLITAN HEALTHCARE CENTER,	:	
INC., D/B/A AS METROPOLITAN	:	
HEALTHCARE CENTER P.C., EASTERN	:	
DIAGNOSTIC AND IMAGING, INC.,	:	
HERSH DEUTSCH, ALLEN LICHT, EDWARD	:	
KANNER, D.C., POLINA SHIKHVARG, EFIM	:	
ITIN, M.D.	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, S.J.

June 14, 2005

At the request of Allen Licht, the court dispensed with his presence at a scheduled hearing on Plaintiffs' Motion for Sanctions and conducted a telephone conference on June 2, 2005 in which Mr. Licht and Richard Castagna, counsel for Plaintiffs, participated.

Licht's primary excuse for some obvious failures to comply with discovery is that the bombardment of papers overwhelmed him and that as a *pro se* litigant, it was difficult to timely respond. In other instances, he argued that he did comply with discovery.

It is possible that there is some merit to Licht's excuse given the large volume of discovery this case has engendered. But, he has shown a history of dilatory tactics that even for a *pro se* party, much less one who, like Licht (although not a lawyer himself), worked for a law firm at one time, is simply not an acceptable way of proceeding.

For example, with regard to Plaintiffs' Motion to Compel Allen Licht's Tax Returns and those of Eastern Diagnostic filed March 2, 2005, the following occurred:

On February 14, 2005, Plaintiffs requested a copy of Tax Form 4506 Authorizations for the years of 1996 through 2003 for both Allen Licht and Eastern Diagnostics, Inc. By letter dated February 21, 2005, Allen Licht refused to provide these forms. He did not file a response to the Motion to Compel filed March 2, 2005. On March 22, 2005, the court entered an order granting Plaintiffs' Motion to Compel. Plaintiffs sent a copy of this court's order and the tax forms to Allen Licht via fax, certified mail and regular mail on March 25, 2005. On April 1, 2005, Plaintiffs again wrote to Allen Licht requesting the forms. The letter was sent via fax, certified mail and regular mail. As of April 27, 2005 (the filing of the Motion), Allen Licht had not complied with this court's order. Plaintiffs filed a Motion for Sanctions on April 27, 2005. Allen Licht filed a response thereto (Docket No. 317) with the executed forms attached.

However, those forms were dated after the filing of the Motion, and Allen Licht failed to provide the tax identification number for Eastern Diagnostic and stated that Plaintiffs should be required to find this information.

The above is but one sample of Licht's dilatoriness and evasiveness. He was the owner of Eastern Diagnostic and did not provide the tax I.D.

Another example has a longer history:

On September 29, 2004, Plaintiffs served Allen Licht with a subpoena for the employment records of certain individuals. A Motion to Quash was granted without prejudice with permission to resubpoena. On December 14, 2004 plaintiffs reissued the subpoena. As of January 12, 2005, he had not complied with the subpoena. Plaintiffs then filed a Motion to Compel Champlost Family Practice, Inc. and Champlost Family Medical Practice, P.C., through their President Allen Licht, to Produce Employment Records for Polina Shikhvarg, Efim Itin, M..D., Edward Kanner, D.C. and Hersh Deutsch (Docket No. 178). Allen Licht did not file a response to this Motion. The court granted Plaintiffs' Motion to Compel on February 1, 2005 (Docket No. 190). On February 22, 2005, the Response of Allen Licht, as Managing Director of Champlost Family Practice, Inc. and Champlost Family Medical Practice, P.C., to Order of the Court Requiring Production of Certain Employment Records was filed.

This "Response" is essentially a Motion for Reconsideration of this Court's Order dated February 1, 2005. Allen Licht averred that he does not have any such records in his care, custody or control, and that all records have been abandoned and/or destroyed. Plaintiffs' response in Docket No. 218 was to request that this court order Allen Licht to appear for a records deposition. By order dated March 9, 2005, Allen Licht's Response and Request to Set Aside Order was denied and Allen Licht was ordered to appear for a records deposition.

On April 4, 2005, Plaintiffs filed a Motion to Compel Allen Licht to Comply with Plaintiffs' Discovery Requests and For Sanctions (Docket No. 255). There were three parts to the Motion: (1) Motion to Compel Responses to Interrogatories and Document Request; (2) Motion for Sanctions for Mr. Licht's Failure to Comply with the March 9, 2005 Court Order; and (3) Motion to Compel Mr. Licht to Answer Questions Refused on February 21, 2005.

By Order dated April 19, 2005, the court ruled:

- (1) Motion to Compel Responses to Interrogatories is Granted;
 - (a) Objection to Interrogatories 1 & 2 is overruled;
 - (b) Answers to Interrogatories 3 & 4 are insufficient; and
 - (c) Responses due within 14 days of the date of the Order (May 3, 2005).

(2) Motion to Compel Production of Documents is Granted;

(a) Responses due within 14 days of the date of the Order (May 3, 2005).

On May 10, 2005, Plaintiffs filed a Motion for Sanctions against Allen Licht (Docket No. 310) for his failure to comply with this Court's Order of April 19, 2005. On May 5, 2005, Plaintiffs contacted Allen Licht demanding that he comply by May 6, 2005. Allen Licht sent a letter to the current tenants at 6000 North Broad Street dated May 5, 2005. This letter purports to be the first time Allen Licht has introduced himself to the "current tenant"; however, in his deposition he testified that he has previously had brief contact with them.

Allen Licht filed his Response to the Motion for Sanctions on May 13, 2005 (Docket No. 317). He attached a copy of the Answers to Interrogatories dated May 5, 2005. Licht argues that he has complied with the document request since he searched his home and is not in control of 6000 North Broad Street and attaches the letter sent to the current tenant on May 5, 2005. He states that he did travel from Florida to Philadelphia for a second deposition (despite the financial hardship).

Allen Licht argues that according to Rule 6(a), Saturdays and Sundays do not count. Also, the day the order was issued should not count; therefore, the true deadline is May 9,

not May 5. This is an incorrect reading of Rule 6(a). The Rule clearly states that intermediate Saturdays and Sundays shall be excluded when the proscribed time frame is less than 11 days.

The conference with Allen Licht left the court with the impression that he has the ability to follow the rules of civil procedure and the orders of this court, as well as the savvy to try to avoid them. His custom of doing the latter has caused unnecessary motions practice.

Licht's failure to comply with discovery orders are in no way substantially justified (see Federal Rule of Civil Procedure 37(a)(4)). It is appropriate that sanctions in the form of reasonable attorney's fees incurred in filing the motion for sanctions on April 25, 2005 and the motion for sanctions on May 10, 2005 be paid by Licht.

An order follows.

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Defendants.	:	

ORDER

AND NOW, this 14th day of June, 2005, it is hereby ORDERED that plaintiff's motions for sanctions (Docket Nos. 293 and 310) are GRANTED, and Allen Licht is directed to pay reasonable attorney's fees for the preparation of those motions. Counsel for plaintiff will submit an affidavit to the court with regard to the fees incurred in preparing the motions aforesaid, within ten (10) days of the date of this order. A copy of that affidavit will be sent to Allen Licht, who may respond to it within seven (7) days thereafter.

IT IS SO ORDERED.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.